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TRENDTEX FABRICS, LTD. and
TRENDTEX HOLDING, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

TRENDTEX FABRICS, LTD., a Hawaii
Corporation; and TRENDTEX
HOLDING, LLC, a Hawaii limited
liability company;

Plaintiff,

vs.

NTKN, INC., a Hawaii corporation;
HUNG KY, an individual; SHAKA
TIME, INC., a Hawaii corporation;
LEILANI'S ATTIC, INC., a California
corporation; and HAWAII
HANGOVER, LLC, a Missouri limited
liability company; MARK MADL, an

Case No. 1:22-cv-00287-MWJS-KJM

DECLARATION OF DWIGHT
HAMAI IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY
JUDGMENT

individual D/B/A CITIES FASHION;
Defendants.

NTKN, INC., a Hawaii
corporation,

Counterclaim Plaintiff,

vs.

TRENDTEX FABRICS, LTD., a Hawaii
corporation,

Counterclaim Defendant.

I, Dwight Hamai, declare as follows:

1. I am the founder of Trendtex Fabrics, Ltd. and Trendtex Holding, LLC.
2. Trendtex Fabrics Ltd. (“Trendtex Fabrics”) is a fabric seller in Honolulu that owns the copyrights to numerous textile print surface designs and sells fabrics printed with those designs. Trendtex has been engaged in the selling of printed fabrics since 1984.
3. Trendtex Fabrics’ registered copyright portfolio includes 518 registrations, some of which are compilations containing multiple designs, that were included as part of Trendtex Fabrics’ 2015 acquisition of another fabric seller, HawaiiPrint, Inc. (“HawaiiPrint”). As part of HawaiiPrint’s windup and integration into Trendtex, HawaiiPrint was renamed HPIEnd, Inc. (“HPI End”) before assigning all of its copyrights to Trendtex on October 1, 2018, and effective May 14, 2015. The assignments were recorded by the United States

DECLARATION OF DWIGHT HAMAI - 2

Register of Copyrights on January 8, 2019. A true and correct copy of the copyright assignments to Trendtex is attached as Exhibit 3. A true and correct copy of the recordation of the assignment is attached as Exhibit 4.

4. Attached hereto as Exhibit 5 is a true and correct copy of Copyright Registration No. VAu 1-104-076, effective May 22, 2012, for HawaiiPrint's Spring 2010 collection, which includes the 73142 and 73138 surface designs, together with relevant excerpts from the application for registration. These copyrights were assigned to Trendtex Fabrics as described in Paragraph 3 above and assigned again to Trendtex Holding, LLC on April 21, 2023.

5. Attached hereto as Exhibit 6 is a true and correct copy of Copyright Registration No. VAu 1-104-023, effective June 6, 2012, for HawaiiPrint's Fall 2011 collection, which includes the 73469 surface design, together with relevant excerpts from the application for registration. This copyright was assigned to Trendtex Fabrics as described in Paragraph 3 above and assigned again to Trendtex Holding, LLC on November 21, 2022.

6. Attached hereto as Exhibit 7 is a true and correct copy of Copyright Registration No. VAu 1-104-025, effective June 6, 2012, for HawaiiPrint's Spring 2012 collection, which includes the 73571 surface design, together with relevant excerpts from the application for registration. This copyright was assigned to

Trendtex Fabrics as described in Paragraph 3 above and assigned again to Trendtex Holding, LLC on April 28, 2023.

7. Attached hereto as Exhibit 8 is a true and correct copy of Copyright Registration No. VAu 1-107-464, effective September 5, 2012, for HawaiiPrint's Summer 2012 collection, which includes the 73614 and 73627 surface designs, together with relevant excerpts from the application for registration. These copyrights were assigned to Trendtex Fabrics as described in Paragraph 3 above and assigned again to Trendtex Holding, LLC on April 28, 2023.

8. Attached hereto as Exhibit 9 is a true and correct copy of Copyright Registration No. VAu 1-190-261, effective November 10, 2014, for HawaiiPrint's Winter 2012 collection, which includes the 4319B surface design, together with relevant excerpts from the application for registration. This copyright was assigned to Trendtex Fabrics as described in Paragraph 3 above and assigned again to Trendtex Holding, LLC on April 21, 2023.

9. Attached hereto as Exhibit 10 is a true and correct copy of Copyright Registration No. VAu 554-340, effective March 7, 2002, for the Eichi Hosomi January 2002 collection, which includes Trendtex Fabrics' EH-20129 surface design, together with relevant excerpts from the application for registration. This copyright was assigned to Trendtex Holding, LLC on April 28, 2023.

10. Attached hereto as Exhibit 11 is a true and correct copy of Copyright Registration No. VAu 1-104-074, effective May 22, 2012, for HawaiiPrint's Fall 2010 collection, which includes the 73269 surface design, together with relevant excerpts from the application for registration. This copyright was assigned to Trendtex Fabrics as described in Paragraph 3 above and assigned again to Trendtex Holding, LLC on April 21, 2023.

11. Attached hereto as Exhibit 12 is a true and correct copy of Copyright Registration No. VA 565-372, effective July 22, 2002, for the Eichi Hosomi June 2002 collection, which includes Trendtex Fabrics' EH-2E13B surface design, together with relevant excerpts from the application for registration. This copyright was assigned to Trendtex Holding, LLC on January 6, 2023.

12. Attached hereto as Exhibit 13 is a true and correct copy of Copyright Registration No. VAu 1-185-736, effective September 24, 2014, for HawaiiPrint's Fall 2012 collection, which includes the 03780 surface design, together with relevant excerpts from the application for registration. This copyright was assigned to Trendtex Fabrics as described in Paragraph 3 above and assigned again to Trendtex Holding, LLC on April 21, 2023.

13. Attached hereto as Exhibit 14 is a true and correct copy of Copyright Registration No. VAu 497-009, effective July 3, 2000, for Trendtex Fabrics' March 2000 collection, which includes the EH-2M59 surface design, together

with relevant excerpts from the application for registration. This copyright was assigned to Trendtex Holding, LLC on April 28, 2023.

14. Beginning in the fall of 2022, Trendtex Fabrics began assigning its copyright portfolio, including all of the copyrights at issue in this action, to a new entity named Trendtex Holding, LLC (“Trendtex Holding”). The copyright assignments include the right to sue for past, present, and future infringements. Trendtex Holding then exclusively licensed the designs back to Trendtex Fabrics so it could continue selling fabrics to garment makers as before.

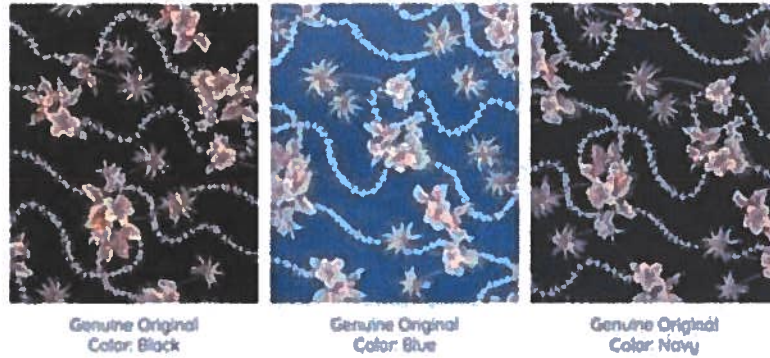
15. Most designs are available in a variety of background colors, and customers often order a design in multiple colors simultaneously.

16. Trendtex Fabrics’ customers are free to manufacture garments and other finished merchandise from purchased fabrics, but they are not given the right to commission their own re-printings of the fabrics. It is also uncommon for customers to re-sell their uncut fabrics.

17. Trendtex Fabrics previously sold some of its fabric displaying some of its copyrighted surface designs to Ky’s International Fashion, Inc. Those sales included:

- a. Three orders for the EH-20129 surface design in black, navy, and blue colorways. A true and correct copy of a report generated from Trendtex Fabrics’ records summarizing the EH-20129 sales is

attached hereto as Exhibit 15. Images of the colorways sold are displayed below.



- b. Seven orders for the EH-2E13B surface design in blue, maize, grey, and white colorways. A true and correct copy of a report generated from Trendtex Fabrics' records summarizing the EH-2E13B sales is attached hereto as Exhibit 16. Images of the colorways sold are displayed below.



- c. Three orders for the EH-2M59R surface design, in red, black, teal, and orange colorways. A true and correct copy of a report generated from Trendtex Fabrics' records summarizing the EH-2M59 sales is

attached hereto as Exhibit 17. Images of the colorways sold are displayed below.



18. Apart from the information kept in Trendtex's own database, documentation of Trendtex Fabrics' sales consists of an initial handwritten sales ticket issued to the customer or a customer order confirmation sheet; a purchase order submitted to the printer detailing the requested quantities, colors, and any other special requests; and an invoice provided to the customer upon final delivery. Due to the time required to print and ship the fabric, invoices were typically dated several months after the initial order date.

19. Trendtex Fabrics has not sold any fabrics with any of the surface designs referenced in Paragraph 17 to any other customers. The one possible exception is a 2001 sale of EH-2E13 to another garment maker, Aloha Republic.

However, EH-2E13 was sold in a different material than EH-2E13B and was a distinguishable design, such as different shading and leaf shapes and a lack of surfboards, as shown in the comparison below.



20. Prior to its acquisition by Trendtex Fabrics, HawaiiPrint also sold fabric displaying some of its copyrighted designs to Ky's International Fashion, Inc. Trendtex Fabrics obtained HawaiiPrint's sales records when it acquired HawaiiPrint. Those sales included:

- a. One order for the 73142 surface design in black, sage, and white colorways, all printed on rayon poplin. A true and correct copy of HawaiiPrint's re-exported invoice from that sale is attached hereto as Exhibit 18. Images of the colorways sold are displayed below.



- b. One order the 73469 surface design in red, orange, and blue colorways, all printed on cotton poplin. A true and correct copy of HawaiiPrint's re-exported invoice from that sale is attached hereto as Exhibit 19. Images of the colorways sold are displayed below.



- c. Two orders for the 73571 surface design in white, burgundy, and black colorways, all printed on cotton poplin. True and correct copies of HawaiiPrint's re-exported invoices from those sales are attached

hereto as Exhibit 20. Images of the colorways sold are displayed below.



Genuine Original
Color: Black



Genuine Original
Color: Burgundy



Genuine Original
Color: White

- d. Three orders for the 73614 surface design in black/red and white/red colorways, all printed on cotton poplin. True and correct copies of HawaiiPrint's re-exported invoices from those sales are attached hereto as Exhibit 21. Images of the colorways sold are displayed below.



Genuine Original
Color: Black/Red



Genuine Original
Color: White/Red

- e. Two orders for the 73627 surface design in navy, white/white, and black colorways, all printed on cotton poplin. True and correct copies of HawaiiPrint's re-exported invoices from those sales are attached hereto as Exhibit 22. Images of the colorways sold are displayed below.



Genuine Original
Color: Black

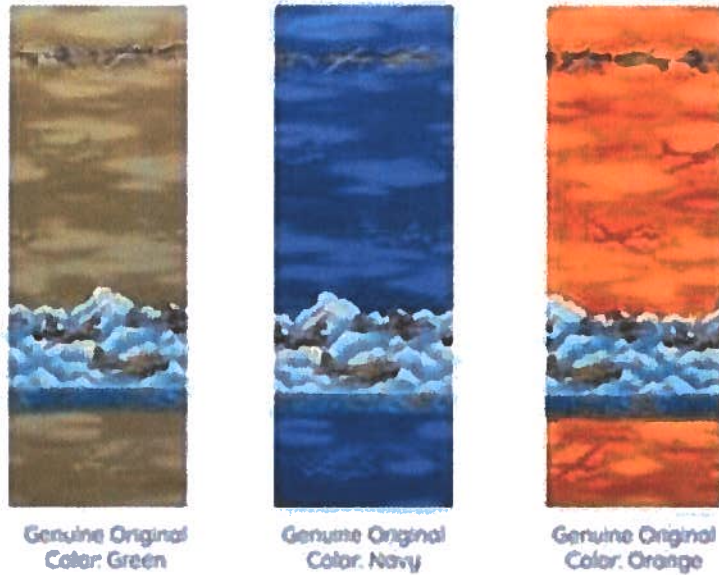


Genuine Original
Color: Navy



Genuine Original
Color: White

- f. One order for the 4319B surface design in navy, green, and orange colorways, all printed on cotton poplin. A true and correct copy of HawaiiPrint's re-exported invoice from that sale is attached hereto as Exhibit 23. Images of the colorways sold are displayed below.



- g. Four orders for the 73269 surface design in white, yellow, and black colorways, all printed on cotton poplin. True and correct copies of HawaiiPrint's re-exported invoices from those sales are attached hereto as Exhibit 24. Images of the colorways sold are displayed below.



Genuine Original
Color: Black



Genuine Original
Color: White



Genuine Original
Color: Yellow

- h. One order for the 03780 surface design in navy, sage, and white colorways, all printed on cotton poplin. A true and correct copy of HawaiiPrint's re-exported invoice from that sale is attached hereto as Exhibit 25. Images of the colorways sold are displayed below.



Genuine Original
Color: Navy



Genuine Original
Color: Sage



Genuine Original
Color: White

- i. One order for the 73138 surface design in black, white, and wine colorways, all printed on rayon poplin. A true and correct copy of

HawaiiPrint's re-exported invoice from that sale is attached hereto as Exhibit 26. Images of the colorways sold are displayed below.



21. HawaiiPrint did not sell fabrics with any of the surface designs referenced in Paragraph 20 to any other customers prior to its acquisition by Trendtex Fabrics. Trendtex also has not sold fabrics with any of the surfaced designs reference in Paragraph 01 to any customer after its acquisition of HawaiiPrint.

22. Beginning in October 2021, Trendtex discovered that NTKN-branded garments were being sold online that appeared to be made from unauthorized reproductions of fabrics that the Ky's Corporation had previously purchased from HawaiiPrint and Trendtex Fabrics. We specifically suspected that these garments were made from reproduced fabric because they were either in colorways or

material that had never been sold by Trendtex Fabrics or HawaiiPrint, or had engraving differences from Trendtex's original printings.

23. Trendtex and HawaiiPrint both kept samples of each colorway from each fabric printing. These samples, called "hanger samples" are shown to customers as previews before the purchased fabrics are shipped from the printer, who was typically located in Asia. The fabrics are then shipped only if the customer approves the results as they appear on the hanger samples.

24. Below is an image of the 73142 hanger samples next to a physical specimen of NTKN's blue 821 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



25. Below is an image of the 73469 hanger samples next to a physical specimen of NTKN's turquoise 493 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



26. Below is an image of the 73571 hanger samples next to a physical specimen of NTKN's green 499 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



27. Below is an image of the 73614 hanger samples next to a physical specimen of NTKN's turquoise 477 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



28. Below is an image of the 73627 hanger samples next to a physical specimen of NTKN's green 492 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



29. Below is an image of the 4319B hanger samples next to a physical specimen of NTKN's turquoise 504 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



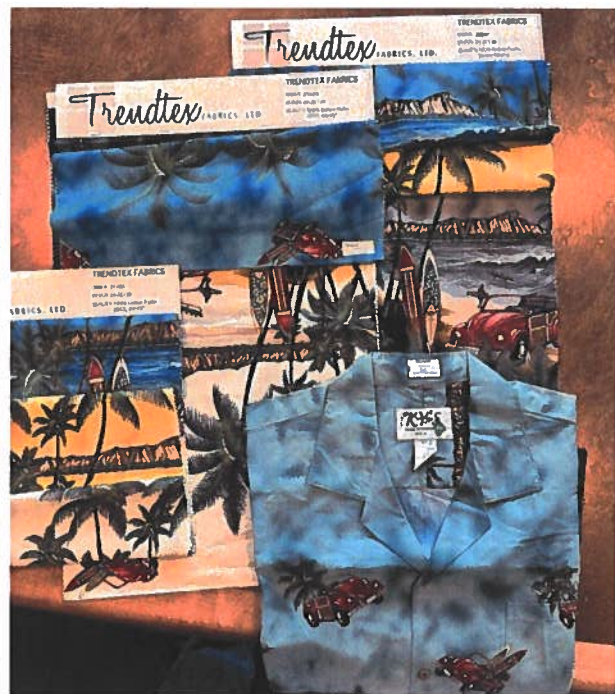
30. Below is an image of the EH-20129 hanger samples next to a physical specimen of NTKN's red 538 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



31. Below is an image of the 73269 hanger samples next to a physical specimen of NTKN's purple 825 dress that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



32. Below are images of the EH-2E13B hanger samples next to a physical specimen of NTKN's green 358 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



33. Below is an image of the 03780 hanger samples next to a physical specimen of NTKN's black 503 shirt that Trendtex obtained and Defendant Hung Ky positively identified at his deposition.



34. Below is an image of the EH-2M59 hanger samples next to a physical specimen of NTKN's pink 342 dress that Trendtex obtained and Defendant Hung Ky positively identified at his deposition. The dress was acquired from Leilani's Attic. At the time of purchase, Leilani's Attic informed buyers that all orders for Ky's International-branded garments would be made to order and shipped directly by NTKN.



35. Below is an image of the 73138 hanger samples.




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I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on February __, 2024 in Honolulu, Hawaii.


Dwight Hamai